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NUMBER 86-1815

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

CREDIT BUREAU SERVICES-NEW ORLEANS,
D/B/A CHILTON CORPORATION,

Petitioner,

VERSUS

THOMAS K. PINNER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF AMICUS CURIAE THE CREDIT BUREAU, INCORPORATED OF GEORGIA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI (WITH BRIEF ATTACHED)

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MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Credit Bureau, Incorporated of Georgia hereby respectfully moves for leave to file the attached brief as amicus curiae in support of the Petition for Writ of Certiorari. The consent of the Petitioner, Sherwin Williams Company, and James J. Schmidt, has been received. The consent of the Petitioner, Chilton Corporation, has been received. The consent of Respondent Edward Pinner has been requested but no response has been forthcoming.

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QUESTIONS PRESENTED

1. Whether a credit reporting agency can be held liable under the Fair Credit Reporting Act in consequence of a truthful report of credit information?

2. Whether a court may impose liability upon a credit reporting agency for failing to follow reasonable procedures to assure maximum possible accuracy, without first determining that the credit report in issue is untruthful or substantially inaccurate?

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STATEMENT CONCERNING INTEREST OF AMICUS CURIAE

The Credit Bureau, Incorporated of Georgia is one of the largest consumer reporting agencies in the United States. It conducts its business in accordance with the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA" or "the Act"). It is interested in

the Petition for Certiorari submitted by Chilton Corporation because of the serious harm to the efficiency of the credit reporting and banking system by a principle of law that credit bureaus may be held liable for violations of the FCRA even where they actually report accurate information, which is the rule established by the decision below.

In enacting the FCRA, Congress found inter alia that:

> (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.
>
> (2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
>
> (3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

15 U.S.C. § 1681(a).

In the decision below, the court permitted a recovery for "negligent investigation" even though the

court found the report made by the credit bureau to be accurate. If this decision is not reversed, and if this Court does not make it clear that a truthful report is not actionable, the cost of the disruption of operations and the litigation over "investigative procedures" where the product - the report itself - is accurate, will increase dramatically the cost of the service, and thus the cost of credit.

SUMMARY OF THE ARGUMENT

A credit bureau operates by gathering individual credit history information from creditors, compiling it, and providing it to its subscribers who are considering credit transactions with those individuals. Such credit histories aid merchants, lenders, insurers, or other businesses to determine whether to make sales, issue insurance, loan money, or engage in other business transactions on the expectation of later payment. With this central information gathering resource, it is no longer necessary for individual creditors themselves to contact multiple references for such information. They can obtain it quickly and economically from a credit bureau.

The FCRA regulates credit bureaus and other "consumer reporting agencies." The stated purpose of the Act is "to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report." S. Rep. No. 91-517, 91st Cong., 1st Sess. 1 (1969). To accomplish that, it mandates that,

> Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

15 U.S.C. §1681e(b). It also affords to each consumer the right to disclosure of the "nature and substance of all information (except medical information) in [the agency's] files on the consumer". 15 U.S.C. § 1681g(a)(1). At the same time, the Act specifies the procedure to be followed whenever a consumer disputes the accuracy of information:

> If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the

> current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information.

15 U.S.C. §1681i(a). If a reporting company negligently or willfully violates any FCRA requirement, the affected consumer may recover damages for any injury actually incurred. 15 U.S.C. § 1681n and § 1681o.

There are times when, because of disagreements between the individual and the creditor from whom the information was obtained, sharp disputes arise. In those instances, the credit bureau is "in the middle". Its obligation to all its other subscribers, to the creditor in question, and to the individual, is to report the item, but also to provide the individual's version. It is not in position to judge who is correct.

In this case, Chilton fulfilled the purpose of the Act by truthfully reporting that Thomas Pinner had a delinquent account at a Sherwin-Williams paint store. Thereafter, Pinner requested and received disclosure of the nature and substance of the report. Once

Pinner filed this lawsuit, Chilton promptly amended its report to state the acknowledged fact that the account was involved in pending litigation.

In upholding an award of damages against Chilton (while exonerating Sherwin-Williams and its agent on grounds of truth), the Fifth Circuit ignored the accuracy of the report. It held that FCRA liability could result from procedural deficiencies despite the truth of the information reported. That conflicts with decisions in the Third, Eleventh, and District of Columbia Circuits, which have held that a plaintiff must prove inaccuracy as the threshold element of a case under 15 U.S.C. § 1681e(b).

To resolve this conflict, and because the Fifth Circuit's misreading of the Act runs to the very heart of the FCRA -- which, after all, is a "fair reporting," not a "fair procedures", Act -- this Court should issue the writ and consider this important legislation for the first time. Unless the decision below is reversed, consumers and credit reporting companies will remain confused as to what the Act requires of them. The credit reporting industry will also stand to incur large costs without commensurate benefits and

to the substantial detriment of the efficiency of the banking system.

ARGUMENT

REASONS FOR GRANTING THE WRIT

1. There Is A Conflict In The Circuits.

Virtually all of the reported actions for damages under the FCRA have included a "reasonable procedures" claim under 15 U.S.C. § 1681e(b). Despite that, there is frustrating disagreement as to the elements of such a claim. The Fifth Circuit held below that there can be inquiry into the reasonableness of a credit reporting company's procedures regardless of the truth of the report in question. Thus, even though Chilton correctly reported Pinner's delinquency, the Fifth Circuit affirmed an award of damages against Chilton on the ground that a different investigation might have been even more enlightening.

Other courts have reached the opposite result, holding that the question of procedures is never reached unless a report can be proven false. E.g., Todd v. Associated Credit Bureau Services, Inc., 451 F. Supp. 447 (E.D. Pa. 1977), aff'd. mem. 578 F.2d

1376 (3d Cir. 1978), cert. denied 439 U.S. 1068 (1979); see also Bryant v. TRW, Inc., 689 F.2d 72, 78 (6th Cir. 1982). Some have ruled that if the specific credit information actually reported is itself correct, the report does not become inaccurate and actionable merely because a more complete explanation of the reported facts might have been, but was not, included. Middlebrooks v. Retail Credit Co., 416 F. Supp. 1013 (N.D. Ga. 1976); Austin v. Bankamerica Service Corp., 419 F. Supp. 730 (N.D. Ga. 1974). Contrary to the Fifth Circuit's decision below, the District of Columbia Circuit has held substantial truth (or fundamental completeness) forecloses liability, regardless of inadequacies in the procedures underlying the report. Koropoulos v. Credit Bureau, Inc., 734 F.2d 37 (D.C. Cir. 1984); Stewart v. Credit Bureau, Inc., 734 F.2d 47 (D.C. Cir. 1984) (per curiam). At least one other court has held that only truth in its entirety precludes an inquiry into the reasonableness of the reporting company's procedures. Tracy v. Credit Bureau, Inc., 174 Ga. App. 668, 330 S.E.2d 921 (1985). That, in turn, conflicts with the Eleventh Circuit's perception that "Congress appar-

ently recognized ... that total accuracy in consumer reports is not a realistic objective." Equifax, Inc. v. F.T.C., 678 F.2d 1047 (11th Cir. 1982).

2. This Case Presents An Important Question Of Federal Law Which Has Not Been, But Should Be, Settled By This Court.

Even though the FCRA affects tens of millions of Americans, and even though it bears upon millions of transactions annually, no FCRA case has ever reached this Court. The Credit Bureau, Incorporated of Georgia respectfully submits that this case presents an extraordinary opportunity to consider the Act, since the issues sought for review are central to the statute's fundamental concern -- accuracy in credit reporting.

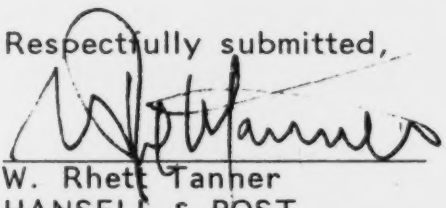
The question whether truth or substantial accuracy is an essential element of liability under the FCRA is not an academic point. It is question that will arise in virtually every future private damage action filed under the FCRA. Moreover, it is question that will affect the manner in which credit reporting companies treat each of the millions of files maintained.

If credit bureaus are exposed to litigation over their investigative procedures in every case, regardless of the truth of the information a bureau publishes, every file carries with it the potential for litigation. The litigation cost potential would be astronomical, given the vast number of files that credit reporting agencies must gather to assure a prompt and efficient system. In short, the decision sought for review will have an enormous impact on the gathering and transmission of credit information in the United States. While imposing a major burden upon the credit system, the decision will result in no counterveiling benefit, since its principal effect will be to mandate the deletion of truthful statements -- statements on which credit grantors otherwise would rely and about which consumers could have no quarrel.

CONCLUSION

For the reasons set forth above, the Petitioner should be granted not only as to the questions presented therein, but also as to the questions framed on page i of this brief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

W. Rhett Tanner, pursuant to Rule 28.3, has this day served all parties represented in this proceeding with three copies each of this MOTION AND BRIEF ON BEHALF OF AMICUS CURIAE THE CREDIT BUREAU, INCORPORATED OF GEORGIA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI, by depositing same in the United States Mail, with first class postage, prepaid and properly addressed to the following parties:

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This 3 day of June, 1987.

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